

DEPARTMENT OF MARINE RESOURCES – PROCEDURAL RULES

CHAPTER 2

AQUACULTURE LEASE REGULATIONS

TITLE INDEX

- 2.05 Definitions
- 2.10 Application Requirements for Standard Leases
- 2.12 Multiple Ownership
- 2.15 Notice of Lease Application and Hearing
- 2.20 Intervention
- 2.25 Agency File
- 2.27 Department Site Review
- 2.29 Prehearing Conference
- 2.30 Aquaculture Lease Hearing Procedures
- 2.31 Evidence
- 2.35 Hearing Officer Report
- 2.37 Decision
- 2.40 Lease Issuance
- 2.41 Competing Aquaculture Lease Applications
- 2.42 Annual Lease Review and Revocation
- 2.43 Lease Rental Fee
- 2.44 Lease Amendments for Adding or Deleting Species
- 2.45 Lease Renewal
- 2.60 Lease Transfer
- 2.64 Experimental Aquaculture Lease
- 2.65 Emergency Aquaculture Lease
- 2.75 Minimum Lease Maintenance Standards
- 2.80 Marking Procedures for Aquaculture Leases

2.90 Limited-purpose aquaculture (LPA) license

DEPARTMENT OF MARINE RESOURCES

Chapter 2 - Aquaculture Lease Regulations

2.05 Definitions

1. The definitions set forth in 12 M.R.S.A. §6072 shall apply to the terms used in this chapter.
 1. Aquaculture.
"Aquaculture" means the culture or husbandry of marine organisms by any person. Storage or any other form of impounding or holding wild marine organisms, without more, shall not qualify as aquaculture. In order to qualify as aquaculture, a project must involve affirmative action by the lessee to improve the growth rate or quality of the marine organism.
 2. Culture or Husbandry.
"Culture or husbandry" means the production, development or improvement of a marine organism.
 3. Riparian Owner.
 - (a) For the purposes of 12 M.R.S.A. §§6072 and 6072-A and 6072-B "riparian owner" means a shorefront property owner whose property boundaries are within 1000 feet of the proposed lease boundaries.
 - (b) For the purposes of 12 M.R.S.A. §6072-C "riparian owner" means a shorefront property owner whose property boundaries are within 300 feet of a limited-purpose aquaculture (LPA) license boundary.
 4. Existing or Potential Uses.
"Existing or Potential Uses" means all water-related activities and resources including, but not limited to, commercial and recreation fisheries, marine transportation, aquaculture, and boating.
 5. Adverse Effects.
"Adverse Effects" means impediments to water-related activities or unreasonable interference with natural processes supporting those activities. This includes, but is not limited to, floating or submerged obstruction, habitat destruction, natural flora and fauna displacement, current flow alteration, and lowered water quality.
 6. Structure.
"Structure" means anything that is constructed or erected with a fixed location, or attached to anything with a fixed location, on intertidal or subtidal lands.
 7. Discharge.
"Discharge" means, for the purpose of this Chapter only, any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant including, but not limited to, the addition of feed, therapeutants or pesticides to waters of the State.
 8. Scientific research.
"Scientific research" is a study or investigation intended to lead to new discoveries or advances within its field or to impact on the progress in that field, as determined by the Department. In making its decision, the Department shall consider the nature, funding and objective of the planned research. The results of any scientific research shall be part of the public record.

9. Commercial research and development.

"Commercial research development" means a study by any person or company designed to try new species, new growing or harvesting techniques, new sites or to determine the commercial viability of an operation. The results of such research will not be part of the public record.

10. LPA license Health Areas.

" Limited-purpose aquaculture (LPA) license Health Areas " means the territorial waters described as follows:

(a) Area 1: Downeast and Canada border

Eastern Line - Head of tide on the St. Croix River and International Boundary Line Canada and the U.S. (Maine).

Western Line from West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).

(b) Area 2: West of Quoddy Head to Schoodic Point

Eastern Line - West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).

Western Line – from Schoodic Point due South (True) to the boundary of Maine's territorial waters.

(c) Area 3: Schoodic Point to the Maine - New Hampshire border

Eastern Line – from Schoodic Point due South (True) to the boundary of Maine's territorial waters.

Western Line – the Maine and New Hampshire border.

(d) Area 4: Damariscotta River

Head of tide to a line drawn from Emerson Point, at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

(e) Area 5: Casco Bay

Eastern Line - Small Pt. due South Magnetic to the boundary of the territorial waters.

Western Line - A straight line from Active Lt. 2 Lt's. Cape Elizabeth to C "1" East Hue & Cry (43° 31.9N)(70° 08.8W); then proceed WSW to the boundary of the territorial waters.

2.10 Application Requirements for Standard Leases

1. Form. Aquaculture lease applications shall be submitted on forms prescribed by the Commissioner and shall contain all information required by applicable statutes, regulations in Chapter 2 and by the Commissioner for the consideration of the aquaculture project. Hearings on applications will not be held until both the applicant and the Department have done the required environmental reviews, which may only be done between April 1 and November 15.

An applicant shall attend a pre-application meeting with the Department prior to conducting field work and completing the application. The pre-application meeting shall be held in order to specifically define the environmental baseline or characterization requirements and other informational needs that the Department determines are necessary to adequately present the proposed lease for review.

For discharge applications, the Department shall coordinate with the Department of Environmental Protection and other state and federal agencies to ensure that all state and federal regulatory requirements are identified.

2. Fee. An application shall not be considered complete unless a non-refundable application fee has been paid in cash or by certified check. The amount of the fee is determined by the nature of the aquaculture activity proposed and the size of the proposed lease site.

APPLICATION FEES

There are four categories of aquaculture; Structure -- No Discharge, Structure -- Discharge, No Structure -- No Discharge, and No Structure -- Discharge. The fees are as follows:

Less than 1 acre	1 to 10 acres	11 to 50 acres	51 to 150 acres
\$ 100	\$ 250	\$ 500	\$ 1000

3. Required Elements. In addition to requirements specified in 12 M.R.S.A. §6072(4), the following at a minimum is required for an application to be considered complete:
 1. A description of the location of the proposed lease by coordinates or boundaries, a map of the lease area and its adjoining waters and shorelands, with the names of the known riparian owners indicated on the map as listed in the municipal or State property tax records and a certified list of the names and addresses of riparian owners as they are listed in the municipal or State property tax records. In determining ownership, assume ownership to the mean low water mark unless otherwise known.
 2. A list of the species to be cultivated and a description of the proposed source(s) of organisms to be grown at the site. (See D.M.R. Regulation: Chapter 24, "Importation of Live Organisms"). The applicant shall identify the source of organisms to be cultured for the lease site.
 3. Environmental Characterization and Baseline.
 - A. No discharge applications. Applications for leases with no discharge require the submission of an environmental characterization that shall include, but not be limited to, bottom characteristics, resident flora and fauna, tide levels, and current speed and direction.

For non-discharge applications, the Department may waive the requirement for current speed and direction if the information is not necessary for applying the decision criteria or other requirements associated with the proposed lease. Examples of sites where this requirement may be waived include, but are not limited to, very shallow sites or areas of little or very limited current flow.

This environmental characterization shall be used to provide a description of the physical and ecological impact of the project on existing and potential uses of the site as a result of the operation. Applicants may do more than one site characterization, but one characterization must be completed between April 1 and November 15, dates inclusive.
 - B. Discharge applications. Applicants that have submitted applications that involve a discharge into State waters must also conduct a Department approved environmental baseline according to Chapter 2(10)(3)(3)(B)(1) and (2) below. The baseline will serve as a benchmark for monitoring the effects of farms on sediments, marine organisms, and water quality. The baseline requirements are as follows:

This baseline shall be used to provide a description of the physical and ecological impact of the project on existing and potential uses of the site as a result of the operation. Applicants may do more than one baseline, but one baseline must be completed between April 1 and November 15, dates inclusive.

The baseline must include a clear and decipherable video showing bottom characteristics as well as the written description.

(1) Sediment & benthic characterization

- (a) A visual survey shall be conducted to document all representative bottom types within the proposed lease area. Representative bottom types include boulder-cobble, gravel, sand, mud, and submerged aquatic vegetation. The survey shall indicate generally whether the lease area is depositional or erosional. The survey shall be documented by video or still photography. If a site is too deep or deemed unsafe to be surveyed by SCUBA diver, then remote video or still photography documentation shall suffice. The results of the visual survey shall be summarized in writing and a copy of the documentation submitted with the application.

The applicant shall confirm the number and the extent of survey transects with the Department prior to conducting the visual survey, and the Department may reduce or increase the number of transects depending on site characteristics or other existing information. Under no circumstances shall the visual survey be waived.

In addition to the minimum diver survey or video or photographic documentation, the Department may require that the bottom substrate be characterized remotely through the use of seismic reflection surveys (side-scan) or a fish finder. A sufficient number of transects to characterize the entire area within the proposed lease must be taken.

- (b) Sediment cores must be taken to adequately sample representative bottom types. Each core's location shall be accurately described. Sediment analysis shall report core depth, depth of any unconsolidated organic material, total organic carbon (cg / g or centigrams per gram) in percent, and grain size distribution (%) from coarse gravel to clay size fractions. Sediment cores may be taken as a subsample of the benthic cores described below in subsection (c).
- (c) Benthic samples shall be sieved through a 1.0 mm sieve and the infauna organisms enumerated and identified to the species or the lowest practical taxonomic level, whichever is higher. A general characterization of the community structure must be provided with the infauna data and sampling methods shall be described.

(2) Water quality characterization

Water column quality shall be characterized on two separate occasions, one of which shall be conducted between August 15 and September 15. Characterization of water temperature, dissolved oxygen concentrations, and salinity shall encompass two tidal cycles in order to provide a representative description of conditions at the site. At least one profile shall be taken no later than 2 hours after sunrise. Current velocity and direction shall be conducted over at least a 16-hour period. Readings shall be at intervals of no less than 3 readings per hour.

On sites where water depth is 30 feet or less at mean low water, samples shall be taken at near surface and near bottom. On sites where water depth is greater than 30 feet at mean low water, samples shall be taken at near surface, the depth corresponding to the bottom of the nets, and near bottom.

Data shall be included in both summarized, or graphical format, and unsummarized format in the application.

4. A description of the commercial and recreational navigation uses of the proposed lease site, including type, volume, time, duration, location and direction of traffic.
5. A description of the degree or exclusive use required by the project. This shall include a description of the use intended for the site by the applicant.
6. A description of current commercial and recreational fishing occurring in the proposed lease tract and the immediate vicinity of the tract. The description should include type, duration and amount of activity.
7. The written permission of every riparian owner whose land to the low water mark will actually be used.
8. A description of riparian owner's current use of lease site for purposes of access to riparian owned land.
9. Financial Capacity. The applicant shall prove that it has obtained all of the necessary financial resources to operate and maintain all aspects of the proposed aquaculture activities. Each applicant shall submit accurate and complete cost estimates of the planned aquaculture activities. The following submissions are acceptable as indicating adequate financial capacity.
 - A. a letter from a financial institution or funding agency showing intent or willingness to commit a specified amount of funds, or
 - B. the most recent corporate annual report and supporting documents indicating sufficient funds to finance the aquaculture activities, or
 - C. copies of bank statements or other evidence indicating availability of the unencumbered funds or proof that equipment and seed stock are available to the applicant.
10. Technical Capability. The applicant shall submit a resume' or other documentation as evidence of technical expertise and capability to accomplish the proposed project.
11. Equipment. The applicant shall submit detailed specifications on all gear, including nets, pens, and feeding equipment to be used on the site. Vessels that service a site are not subject to this provision. This information shall include documentation that the equipment is the best available technology for the proposed activity. Where the Department determines in the review of the application that technological or economic limitations would make the use of such equipment unfeasible, a design, operational standard, management practice, or some combination thereof may be substituted to meet the intent of this provision.

For any applications where petroleum products are to be used, a spill prevention control plan shall be provided with the application.

Documentation shall include both plan and cross-sectional views and either schematic or photographic renderings of the generalized layout of the equipment as depicted from two

vantage points on the water. The location of the vantage points from the proposed lease area shall be included in the application.

The application shall also include information on the anticipated typical number and type of vessels that will service the proposed site, including the frequency and duration of vessel traffic.

4. Completion

1. Upon receipt of a written application, the applicant shall receive notice by the Department that the application was received. Within 30 working days of receipt of a written application, the Commissioner shall:
 - A. Determine whether the application is complete, containing sufficient information in which a decision regarding the granting of the application may be taken, and notify the applicant of his determination. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be complete.
 - B. When the application is complete, the Commissioner will make a determination whether the application could be granted and whether the applicant has the financial and technical capability to carry out the proposed activity. If the Commissioner makes both determinations in the affirmative, he or his designee shall schedule a hearing on the application. If the Commissioner or his designee determines either that the application could not be granted or the applicant lacks the necessary financial or technical capacity the applicant shall be notified in writing of that determination and no further Department action on the application is required.

5. Proposed Site Marking

At least 60 days prior to the proposed hearing date, the applicant shall place visible markers which delineate the area proposed to be leased.

2.12 Multiple Ownership

1. Corporate Applicants. Corporate applicants for aquaculture lease(s) shall include the following information in their application:
 1. The date and state in which incorporated and a copy of the Articles of Incorporation;
 2. The names, addresses, and titles of all officers;
 3. The names and addresses of all directors;
 4. Whether the corporation, or any stockholder, director or officer has applied for an aquaculture lease for Maine lands in the past, and the outcome or current status of that application or lease.
 5. The names and addresses of all stockholders who own or control at least 5% of the outstanding stock and the percentage of outstanding stock currently owned or controlled by each such stockholder.
 6. The names and addresses of stockholders, directors or officers owning an interest, either directly or beneficially, in any other Maine aquaculture leases, as well as the quantity of

acreage from existing aquaculture leases attributed to each such person under paragraph 3 below.

7. Whether the corporation or any officer, director, or shareholder listed pursuant to Chapter 2.12 (1)(5) has ever been arrested, indicted or convicted of or adjudicated to be responsible for any violation of any marine resources or environmental protection law, whether state or federal.
2. Partnership Applicant. Partnership applicants for aquaculture lease(s) shall include the following information in their application:
 1. The date and state in which the partnership was formed and a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership.
 2. The names, addresses, and ownership shares of all partners;
 3. Whether the partnership or any partner has applied for an aquaculture lease for Maine lands in the past and the outcome or current status of that application or lease;
 4. Whether the partnership or any partner owns an interest, either directly or beneficially, in any other Maine aquaculture leases as well as the quantity of acreage from existing aquaculture leases attributed to the partnership or partner under paragraph 3 below.
 5. Whether the partnership or any partner has been arrested, indicted or convicted of or adjudicated to be responsible for any violation of marine resources or environmental protection law, whether state or federal.
3. Aquaculture Lease Acreage

No lease may be granted that results in a person being a tenant of any kind in leases covering an aggregate of more than 250 acres. For the purposes of calculating ownership of aquaculture lease acreage, the amount of acreage leased by a corporation or partnership will be attributed to the partnership or corporation and collaterally to shareholders in the corporation or partnership as individuals at a rate equal to the shareholders' ownership in the corporation or partnership. For example, if a corporation holds an aquaculture lease of 100 acres and two people own 50% stock interest in the corporation, the corporation will be credited with leasing 100 acres and each individual will be deemed to hold 50 aquaculture lease acres.

2.15 Notice of Lease Application and Hearing

1. Notice of Completed Application

At the time that an application is determined to be complete in accordance with Chapter 2.10(4), the Department shall forward a copy of the completed application to the known riparian owners within 1,000 feet of the proposed lease and to the officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.

2. Public Scoping Session

The Department shall determine whether or not to conduct an informal public scoping session on the aquaculture lease application. Any public scoping session would be held in the municipality in which the proposed lease is located and be scheduled prior to the Department's site work. The purpose of a public scoping session shall be to familiarize the general public with the content of the application, to allow the public an opportunity to ask questions of the applicant and the Department,

and to provide the Department with information that can be used during field work or agency review of an application.

The applicant is required to attend a public scoping session on the application when one is held.

The Department shall provide notice of the scoping session to riparian landowners within 1,000' of the proposed lease as indicated in the application, and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts. All other interested individuals or parties may request to be placed on the Department's service list for notification of these meetings or other proceedings relating to the processing of aquaculture lease applications.

The Department will issue a press release to the print media regarding the public scoping session and shall also publish a notice in papers of general circulation in the area of the proposed lease.

3. Personal Notice

At least 30 days prior to the date of the public hearing, the Department shall mail a copy of the notice of hearing, lease application and chart describing the lease area to the following persons:

1. Riparian owners as listed in the application;
2. The municipality or municipalities in which the lease area is located, or the proposed lease abuts;
3. The applicant; and
4. Any public agency the Department determines should be notified, including but not limited to, State Planning Office, Department of Environmental Protection, Department of Conservation, Department of Inland Fisheries and Wildlife, Regional Planning Office, United States Coast Guard, and United States Army Corps of Engineers.

4. Public Notice

The Department shall publish a notice of the public hearing at least twice in a newspaper of general circulation in the area affected unless otherwise prescribed by the Maine Administrative Procedure Act. Such notice shall be published once at least 30 days prior to the hearing and a second time at least 10 days prior to the hearing. Notice of the public hearing shall also be published in a trade, industry, professional or interest group publication which the Department deems effective in reaching persons who would be entitled to intervene.

Public notice shall include the following information:

1. a statement of the legal authority under which the proceedings are being conducted, including reference to the Administrative Procedures Act, 5 M.R.S.A. §9051 et seq. and the aquaculture lease provisions of 12 M.R.S.A. §6072;
2. a short, plain statement of the nature and purpose of the proceeding and the nature of the aquaculture lease application;
3. a statement of the time and place of the hearing;
4. a statement of the manner and time within which applications for Intervention may be filed;

5. a statement of the manner and time within which evidence and argument may be submitted to the Department for consideration.

The Department shall also distribute press releases regarding the public hearing to print media outlets serving the area of the proposed lease application at least two weeks prior to the public hearing.

2.20 Intervention

1. Forms

The Commissioner shall on request supply application forms for intervenor status and require the submission of the following information:

1. The identity of intervenor applicant;
2. A description of the manner in which the intervenor applicant may be substantially and directly affected by the granting of an Application. This description shall include information describing the intervenor applicant's existing use of the proposed lease area. In the event that the applicant is not a member of a class which may be substantially and directly affected by the proceeding, the applicant shall describe any other interest he may have in the lease proceeding which merits Department approval of his intervenor status; and
3. A description of intervenor applicant's objections, if any, to the proposed aquaculture lease.

2. Filing of Applications

Any application for intervenor status must be filed in writing and received by the Department at least 10 days prior to the hearing. The Commissioner may waive the 10 day deadline for good cause shown.

3. Participation Limited or Denied

At least 5 days prior to the hearing, the Commissioner shall decide whether to allow or refuse intervenor applications. The Commissioner shall provide written or oral notice of his decision to the intervenor applicant and all other parties to the proceeding. When participation of any intervenor is limited or denied, the Commissioner shall include in the hearing record an entry noting his decision and the reasons therefore.

1. Full Participation. The Commissioner shall approve intervenor status for any person who is substantially and directly affected by the granting of an aquaculture lease application, and for any other agency of federal, state, or local government.
2. Limited Participation. The Commissioner may grant limited intervenor status to an intervenor applicant where the Commissioner determines that the applicant has a lesser interest than that necessary for full intervenor status but whose participation as a limited intervenor is warranted or would be helpful to the Commissioner in his decision making. The Commissioner may also grant limited intervenor status when the applicant has an interest in the proceeding and where the Commissioner determines that the applicant's interest or evidence to be offered would be repetitive or cumulative when viewed in the context of the interest represented or evidence to be offered by other intervenors. The Commissioner shall describe the manner in which a limited

intervenor is permitted to participate in the adjudicatory process in his written notification of the granting of such status.

3. Consolidation. The Commissioner may require the consolidation of two or more intervenors' testimony, evidence and questioning if he determines that it is necessary to avoid repetitive or cumulative evidence or questioning.
4. Correspondence of Parties. Once admitted as an intervenor, whether full or limited, the intervenor applicant shall be considered a party to the proceeding. Each party shall provide copies of all correspondence with the Department to all other parties and will be notified of all communications between the Department and other parties to the aquaculture lease proceedings.

2.25 Agency File

1. Upon receipt of an aquaculture lease application, the Commissioner shall open an agency file, which file shall include all written correspondence from parties and non-parties concerning the application and memoranda of oral communications between the department and parties and non-parties concerning the lease application.
2. Public Inspection
The agency file shall be open for public inspection by prior appointment during normal business hours. The Department will supply copies of the file contents to any person for a charge according to the Department schedule.

2.27 Department Site Review

1. On site Inspection
 1. An inspection of the proposed aquaculture site and the immediate surrounding area will be conducted by the Department between April 1 and November 15, both days inclusive. The site must be marked as referenced in Chapter 2.10(5) by the applicant.
 2. Information obtained on site will include but will not necessarily be limited to bottom composition, depth and features; typical flora and fauna; numbers of relative abundance of commercial and recreational species; evidence of fishing activity; distances to shore; and navigation channels and moorings.

2. Documented Information

Site specific documented information which is available will be assembled and included in the Department report, including verification of the location of the proposed lease boundaries, distances to shore, navigational channels and moorings, tide, current, and temperature data, patterns of ice formation and flows, location of shellfish beds, observed fishing activity in and around the proposed site, and the location of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease. The description and location of existing or proposed aquaculture lease sites within the area will be included. For the purpose of this report the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.

The Department shall determine whether or not to verify the applicant's water quality information (tide, current, salinity, dissolved oxygen) through its own measurements. If the applicant's

information is deemed to be adequate for review, then the water quality section of the report may be waived.

The Department shall conduct an adequate number of dives or remote video transects to substantiate benthic conditions and substrate characteristics as submitted by the applicant. The Department reserves the right to request additional information of the applicant in the event that the information in an application is found to be insufficient or inadequate for review.

If a proposed lease site is located in a jurisdiction that employs a harbormaster, the Department shall request information from the municipal harbormaster about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, beaches, parks, and docking facilities in proximity to the proposed lease.

2.29 Prehearing Conference

The Commissioner may require parties to attend a prehearing conference if the complexity of the issues or volume of evidence indicates that a prehearing conference would aid in the determination of issues raised by the application. The Commissioner may issue a prehearing order which sets forth the procedure to be followed by the parties with regard to such issues as the pre-filing of testimony, the conduct of the hearing and the closure of the record.

2.30 Aquaculture Lease Hearing Procedures

1. Presiding Officer

1. The presiding officer at any aquaculture lease hearing shall be either the Commissioner or a Department employee or representative designated by the Commissioner to act as hearing officer.
2. The presiding officer shall have the authority to:
 - A. rule upon issues of evidence and procedure;
 - B. regulate the course of the hearing;
 - C. certify questions to the Commissioner for his determination;
 - D. administer oaths; and
 - E. take such other action as may be necessary for the efficient and orderly conduct of the hearing, consistent with these regulations and applicable statutes.
3. The presiding officer may permit deviation from these procedural regulations for good cause shown, in so far as compliance is found to be impracticable or unnecessary.

2. General Conduct

1. **Opening Statement.** The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. Record of Testimony. All testimony at aquaculture lease hearings shall be recorded and, if necessary for judicial review, transcribed.
3. Witnesses. All witnesses must be sworn and will be required to state his/her name, residence, and whom, he/she represents, if anyone, for the purpose of the hearing.
4. Testimony in Written Form. At any time prior to or during the course of the hearing, the presiding officer may require that all or part of the testimony to be offered at the hearing be filed with the Department in written form at a prescribed time prior to the hearing. All such pre-filed written testimony must be sworn and all persons offering sworn testimony in written form must be present at the hearing and subject to cross-examination. This subsection shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who is not a party or affiliated with a party.

3. Continuance

All hearings conducted pursuant to these regulations may be continued by the presiding officer for reasonable cause and reconvened from time to time and place and place by the presiding officer. The presiding officer shall provide reasonable notice to the parties and the public of the time and place of such reconvened hearing.

4. Cameras and Microphones

The placement and use of television cameras, still cameras, motion picture cameras, microphones and other recording devices may be regulated by the presiding officer to ensure the orderly conduct of the hearings.

2.31 Evidence

1. Evidence which is relevant and material to the subject matter of the hearing, and is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious may be excluded. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted.
2. The presiding officer may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical, or scientific matters within the Department's specialized knowledge as well as statutes, regulations and non-confidential agency records. When facts are noticed officially, the presiding officer shall state the same during the hearing or otherwise notify all parties and they shall be able to contest the substance or materiality of the facts noticed. Facts officially noticed shall be included and indicated as such in the hearing record.
3. Documentary and Real Evidence
 1. All documents, materials and objects offered and accepted as evidence shall be numbered or otherwise identified and included in the record. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require any person offering documents or photographs as exhibits to submit a specified number of copies unless the document or photograph is determined to be unsuitable for reproduction.

2. All written testimony and documents, materials and objects submitted into evidence shall be made available during the course of the hearing for public examination. All hearing evidence shall also be available for public examination upon prior appointment at the Department of Marine Resources in Hallowell during normal business hours.
3. The agency file containing the application and agency correspondence shall be submitted as documentary evidence in the hearing record.

4. Objections

All objections to rulings of the presiding officer concerning evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing. During the course of the hearing or after the close of the hearing, the Commissioner may determine that the ruling of the presiding officer was in error and order the hearing reopened or take any other action he deems appropriate to correct the error.

5. Offer of Proof

An offer may be made in connection with an objection to a ruling of the presiding officer excluding any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence.

6. Public Participation

Any person may participate in a hearing by making oral or written statements explaining his position on the issues, and may submit written or oral questions to the parties through the presiding officer, within such limits and upon such terms and conditions as may be fixed by the presiding officer.

7. Testimony at Hearings

1. Order of Presentation. Unless varied by the presiding officer, hearing testimony shall be offered in the following order:
 - A. Direct evidence by applicant and applicant's witnesses in support of the application.
 - B. Testimony by Department staff and consultants.
 - C. Testimony by members of federal, state and local agencies.
 - D. Direct evidence by intervenors supporting the application.
 - E. Direct evidence by intervenors opposing the application.
 - F. Testimony by members of the public.
2. Questions. At the conclusion of his/her testimony each witness may be questioned in the order described below. The presiding officer may require that questioning of witnesses be conducted only after the conclusion of testimony by an entire category of witnesses for the purposes of efficiency or clarity of record.

- A. The presiding officer, legal counsel and Department staff may question witnesses at any time.
 - B. The applicant.
 - C. Federal, state and local agency representatives.
 - D. Intervenors
 - E. At the discretion of the hearing officer, all other members of the public may have the opportunity to question witnesses directly or by oral or written questions through the presiding officer.
8. Conclusion of Hearing
- 1. At the conclusion of the hearing the record shall be closed and no other evidence or testimony will be allowed into the record, except by stipulation of the parties or as specified by the presiding officer.
 - 2. The Commissioner may re-open the hearing record after it has been closed to take additional evidence on specific issues where the Commissioner is not satisfied that he has all of the information before him necessary to make a decision.
9. Record

A full and complete record shall be kept for each aquaculture lease application proceeding. The record shall include, but shall not be limited to, the application, supporting documents, all exhibits, proposed findings of facts and conclusions of the presiding officer, if any, staff documents, the Commissioner's findings of facts and conclusions, and a recording or transcript of the hearing.

2.35 Hearing Officer Report

- 1. In the event that an aquaculture lease hearing is conducted by a hearing officer other than the Commissioner, the hearing officer may prepare a report, including proposed findings of fact, conclusions of law and, at the Commissioner's request, a recommended decision. A copy of the hearing officer's report shall be provided to each party and each party shall have an opportunity to file responses or exceptions to the report within 10 days following receipt of the report.
 - 1. In submitting responses and exceptions, parties may submit a petition to the hearing officer to correct mis-statements of fact in the report. The hearing officer may correct any mis-statements of fact in his report prior to submission of the report to the Commissioner.
 - A. The report shall be submitted to the Commissioner with the parties' responses and exceptions.
- 2. Nothing in this section shall prevent the Commissioner from reaching his decision based solely on the record, after review of the hearing tape or transcript and after review of the hearing record.

2.37 Decision

- 1. After review of the agency record, the Commissioner shall issue a written decision, complete with findings of fact and conclusions of law.

1. The Commissioner may grant an aquaculture lease if he is satisfied that the proposed project meets the conditions outlined by 12 M.R.S.A. §6072 (7-A).
 - A. Standards: In making his decision the Commissioner shall consider the following with regard to each of the statutory criteria:
 - (1) Riparian Owners Ingress and Egress. The Commissioner shall examine whether the riparian owners can safely navigate to their shore. The Commissioner shall consider the type of shore involved and the type of vessel that can reasonably land on that shore. He/she shall consider the type of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures.
 - (2) Navigation. The Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area. The Commissioner shall consider the current uses and different degrees of use of the navigational channels in the area in determining the impact of the lease operation. For example: A lease area adjacent to the usual course of a barge in tow shall be held to a stricter standard than one in an area frequented by only outboard skiffs. High tide "short cuts" shall not be considered navigational ways for the purposes of this section. Any surface structures that could be within 50' of a restricted channel at low tide must be marked with retro reflective tape and a radar reflector.
 - (3) Fishing. The Commissioner shall examine whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. This examination shall consider such factors as the number of individuals that participate in recreational or commercial fishing, the amount and type of fishing gear utilized, the number of actual fishing days, and the amount of fisheries resources harvested from the area.
 - (4) Other Aquaculture Uses. The Commissioner shall consider any evidence submitted concerning other aquaculture uses of the area. The intensity and frequency of such uses as well as the degree of exclusivity required for each use shall be factors in the Commissioner's determination of whether any interference is unreasonable. The number, size, location, and type of other aquaculture leases shall be considered by the Commissioner.
 - (5) Existing System Support. The Commissioner shall consider the degree to which the use of the lease site will interfere with the ability of the area to support ecologically significant flora and fauna. Such factors as the degree to which physical displacement of rooted or attached marine vegetation occurs, the amount of alteration of current flow, increased rates of sedimentation or sediment resuspension, and disruption of finfish migration shall be considered by the Commissioner in this determination.
 - (6) Source of Organisms to be Cultured. The Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.
 - (7) Interference with Public Facilities. The Commissioner shall consider the degree to which the lease interferes with public use or enjoyment of municipally owned, state owned or federally owned beaches, parks, or docking facilities. Leases may not unreasonably interfere with such beaches, parks, or docking facilities.

2. Conditions

The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions shall encourage the greatest multiple, compatible uses of the leased area, but shall also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. A lease may not be finally approved unless the Commissioner has received certification from the Department of Environmental Protection (DEP) that the project will not violate the standards ascribed to the receiving waters classification, 38 M.R.S.A. §465-B and DEP has issued any required National Pollution Discharge Elimination System Permit governing the discharge of pollutants pursuant to section 402 of the Clean Water Act and 38 MRSA §413. The Commissioner may require environmental monitoring of a lease site (see Chapter 2.37(2)) and may establish any reasonable requirements to mitigate interference, including but not limited to restrictions on:

- A. specific stocking limits, feeding requirements, husbandry techniques and harvesting methods;
 - B. the size and shape of gear, nets, or enclosures;
 - C. the deployment and placement of gear; and
 - D. the timing of various project operations.
3. The Commissioner's denial or approval of a lease application shall be considered final agency action for purposes of judicial review.
 4. Within 120 days after hearing on an application, the Commissioner shall render a final decision, unless the applicant agrees to a longer time.

2. Environmental Monitoring

The Commissioner may require that environmental monitoring be conducted on lease sites. Such monitoring shall: be conducted by the applicant or the applicant's agent; be undertaken on a schedule to be stipulated by the Commissioner, shall include the information designated by the Commissioner in the lease decision, which may include an analysis of water chemistry phytoplankton, zooplankton, and fish larvae profiles. The results of such monitoring shall be summarized in a written report and submitted to the Department within 90 days of completion of each study.

3. Minimum Finfish Lease Site Separation

For all lease applications granted after February 17, 2003 all finfish pen culture lease sites must be a minimum of 2,000 feet by water from any other finfish lease site located in Maine waters. This requirement does not apply to the renewal or transfer of an existing lease, or to the issuance of any new lease within the approximate boundaries of a prior, terminated lease, provided that the lease holder has entered into and is in compliance with a Department approved bay management agreement and is in compliance with all provisions of the Department's regulations in Chapter 24.

2.40 Lease Issuance

1. Prior to issuing a lease, the Department shall send a draft lease for review to the applicant.

2. Applicant Responsibilities. Within 30 days of the Commissioner's decision and prior to issuance of the lease, the applicant must complete the following requirements:

1. establish an escrow account or secure a performance bond in the amount required by the Department in the draft lease. The amount is to be determined by the nature of the aquaculture activities proposed for the lease site as follows:

Category of Aquaculture Lease:

No structure, no discharge	\$ 500.00
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No structure, discharge	\$ 500.00
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Structure, no discharge	\$
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Total combined area of all structures on lease:

≤400 square feet	\$1,500
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>400 square feet	\$5,000
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Structure, discharge	\$25,000
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A single performance bond for a structure, discharge lease may be held to meet lease obligations for up to no more than 5 individual leases retained by a leaseholder.

The Department may prorate the performance bond amount for a structure, no-discharge lease where structures are in excess of 2,000 square feet in order to increase the bonding requirement to satisfy the requirements of these rules.

2. pay the rental fee due for the first year of the lease term.
3. Immediately following, but not before signing of the lease by the Department and the applicant, the lease must complete the following requirements:
 1. file the lease or a memorandum of lease in the Registry of Deeds of the county in which the lease tracts are located, and
 2. publish notice of the lease issuance in the newspapers in which the aquaculture lease hearing notices originally appeared, following Department approval of the notice.
4. Compliance.

Failure to maintain an escrow account or performance bond, to pay rental fees in a timely manner, or failure to comply with the terms of the lease, these regulations or any applicable laws shall be grounds for lease revocation under Chapter 2.42.

5. Lease Term and Validity.

The term of the lease shall run from the date of the Commissioner's decision but no aquaculture rights shall accrue in the lease area until the lease is signed.

6. Other Licenses.

The lease holder is responsible for obtaining any requisite licenses and special licenses from the Department prior to beginning operations.

2.41 Competing Aquaculture Lease Applications

1. To qualify as a competing application under subsections 2 and 3, an application must be accepted by the Department prior to the publication of the first public notice of hearing to consider a previously filed lease application for identical or overlapping lease areas.
2. In the event the Department receives competing aquaculture lease applications for a lease site, the Department shall give preference in granting a lease as follows:
 1. first to the Department;
 2. second, to the riparian owner of the intertidal zone within the leased site area;
 3. third, to fishermen who have traditionally fished in or near the proposed lease area; and
 4. fourth, to the riparian owner within 100 feet of the coastal waters proposed to be leased.
3. If the Department receives competing applications which are either in the same preference category as outlined in Chapter 2.41(2), or which are not in any preference category, the applications shall be considered sequentially according to the date on which the application was deemed complete by the Commissioner pursuant to Chapter 2.10(4)(1)(A) of these regulations.
4. Except as described in Chapter 2.41 (3) above, when the Department receives competing applications, it shall schedule one hearing to consider the applications concurrently.

2.42 Annual Lease Review and Revocation

The Commissioner shall conduct an annual review of each aquaculture lease.

1. If the Commissioner determines following an annual review or at any other time that the applicant has conducted substantially no research or aquaculture depending on the purpose of the lease within the preceding year, that the aquaculture or research within the aquaculture lease area has been conducted in a manner substantially injurious to marine organisms, or that any other lease condition or the terms of these regulations or any applicable law has been violated, he may revoke the lease.
2. Unless the leaseholder waives the same, the Commissioner shall hold an adjudicatory hearing to consider revocation of a lease, subject to the notice and hearing procedures set forth in these regulations.

2.43 Lease Rental Fee

Rental shall be payable hereunder as follows:

Fifty dollars (\$50.00) per acre, per year, payable on or before each October 1 throughout the term of the lease.

2.44 Lease Amendments for Adding or Deleting Species

1. Requests for amending leases for adding or deleting species grown at a lease site must be submitted on forms prescribed by the Commissioner.

2. A leaseholder who seeks a species amendment that will result in a change to the original lease conditions or alters the intent of the original decision shall file an application for an aquaculture lease pursuant to Chapter 2.10.

2.45 Lease Renewal

1. A lessee must file with the Department an application to renew a lease no later than 6 months prior to the lapse of the prior lease.
2. Renewal of a lease shall be an adjudicatory proceeding with notice as provided by these regulations, except that no hearing is required unless it is requested, in writing, by five or more interested persons.
3. The Commissioner shall grant a lease renewal unless:
 1. the prior lessee has not complied with the lease agreement or these regulations or any applicable laws during the previous term of the lease;
 2. the prior lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term; or
 3. the Commissioner finds that it is not in the best interest of the state to renew the lease. Consideration of the best interest of the state may include, but shall not be limited to, conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest.

2.60 Lease Transfer

1. Application. A lessee, on a form supplied by the Commissioner, may apply for Department approval of the transfer of his aquaculture lease to another person for the remaining portion of the lease term.
2. Procedure. A lease transfer shall be an adjudicatory proceeding subject to the notice and hearing requirements, as set forth for initial lease application in these regulations, except that no hearing is required unless requested, in writing, by five or more interested persons.
3. Decision. The Commissioner may grant the lease transfer if he determines that:
 1. the change in lessee's identity does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A);
 2. the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. §6072(8); and
 3. the lease transfer is not for speculative purposes. "Speculative purposes" shall be found to exist but without limitation whenever the owner of the lease to be transferred has not conducted any substantial aquaculture on the lease sites, including but not limited to seeding, cultivation or harvest of organisms.

2.64 Experimental Aquaculture Lease

1. The Commissioner may grant an experimental lease pursuant to 12 M.R.S.A. §6072-A for areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for commercial aquaculture research and development or for scientific research. An experimental lease may only be granted for areas of 2 acres or less and for a period of time of 3 years or less.
2. Experimental Aquaculture Lease Application Requirements
 1. Form. Experimental aquaculture lease applications must be submitted on forms prescribed by the Commissioner and must contain all information required by the Commissioner for consideration of the lease.
 2. Fee. An application shall not be considered complete until a nonrefundable application fee has been paid for in cash or by certified check. The application fee for an experimental lease application shall be \$100.
 3. Required elements:
 - A. The lease applicant's name, address, home and business phone number of the applicant, and, if applicable, the location and Department number of any emergency lease which may be held on the area for which the experimental lease is being applied.
 - B. A description of the proposed lease by coordinates or boundaries (metes and bounds), total acreage, a map of the lease area and the adjoining waters and shoreline, with a certified list of names and addresses of riparian owners indicated on the map as listed in the municipal tax records.
 - C. A description of the research or development study to be conducted on the site. The description must include: the purpose and design of the study; the type, amount and proposed source of organisms to be grown; a drawing of any structures that will be used; a description of the culture and harvesting techniques that will be used; and the expected length of the study. The description shall also indicate whether the research is for commercial research and development or for scientific purposes.
 - D. A description of the degree or exclusive use required by the project.
 - E. A description of existing uses of the proposed lease area, including commercial and recreational fishing activity, moorings, navigation and navigational channels, and use of the area by riparian landowners for ingress and egress. The description shall include the type, volume, time, duration, location and amount of activity. A signed statement from a Department biologist or Marine Warden may be submitted to verify this information.
 - F. The written permission of every owner of intertidal land in, on or over, which the experimental activity will occur. If private property is to be used for access, written permission from the property owner must be provided with the application.
 - G. A general description of the area including major physical and biological features, including the flora and fauna of the area (i.e., type of bottom, presence of eelgrass beds, shellfish beds, etc.) as well as the general shoreline and upland characteristics (i.e., sand beach, rocky headland, saltmarsh).

In lieu of a written description, applicants may submit a clear and decipherable video (or a Department approved alternative) of the bottom of the proposed lease site and the

surrounding shoreland using a transect methodology approved by the Department. Applications that involve a discharge must be filmed between April 1 and November 15 unless otherwise specified by the Department. Applications that do not involve a discharge may be filmed at any time of year, unless otherwise specified by the Department.

4. Submission of material used for an experimental lease application. An applicant who has an active emergency lease issued by the Department may use the relevant information in that application for satisfying the requirements of an experimental lease application, if the experimental lease is in the same location and of the same dimension as the emergency lease. If the Commissioner determines that the information is not sufficient for the purposes of granting an experimental lease, the applicant must submit additional information to fulfill the application requirements.
5. Completion. Upon receipt of a written application, the Department shall notify the applicant of its receipt. Within 20 working days of receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information on which a decision regarding the granting of the application may be made. The Commissioner shall notify the applicant of his/her determination. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be complete.
6. Proposed Site Marking. During the time period when the application is being considered by the Department, the applicant must place visible markers to delineate the area proposed to be leased.
3. Department Site Review. The Department shall inspect the proposed site and immediate areas to obtain or verify information such as: the location of proposed lease boundaries; the general characteristics of the area, including bottom composition, depth and features; typical flora and fauna; numbers or relative abundance of commercial and recreational species; evidence of fishing activity; distances to shore; navigation channels; moorings; locations of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease site; and the amount and density of all other aquaculture activity in the area. For the purpose of this review, the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.

If a proposed lease site is located in a jurisdiction that employs a harbormaster, the Department shall request information from the municipal harbormaster about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, beaches, parks, and docking facilities in proximity to the proposed lease.

4. Notice of Application and Comment Period.

1. Notice of Completed Application.

At the time that an application is determined complete in accordance with 2.64(2)(5), the Department shall forward a copy of the completed application to the known riparian owners within 1,000 feet of the proposed lease and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.

2. Public Scoping Session

The Department shall determine whether or not to conduct an informal public scoping session on the aquaculture lease application. Any public scoping session would be held in the municipality in which the proposed lease is located and be scheduled prior to the Department's site work. The purpose of a public scoping session shall be to familiarize the general public with the content of the application, to allow the public an opportunity to ask questions of the applicant and the Department, and to provide the Department with information that can be used during field work or agency review of an application.

The applicant is required to attend and participate in a public scoping session on their application when one is held.

The Department shall provide notice of the scoping session to riparian landowners within 1,000' of the proposed lease as indicated in the application, and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts. All other interested individuals or parties may request to be placed on the Department's service list for notification of these meetings or other proceedings relating to the processing of aquaculture lease applications.

The Department will issue a press release to the print media regarding the public scoping session and shall also publish a notice in papers of general circulation in the area of the proposed lease.

3. Comment Period

Any person may provide the Commissioner with written comments on the experimental lease application. At least 30 days prior to the deadline for comments, the riparian landowners listed in the application and the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, shall receive a summary of the application, a statement on the manner and time within which comments may be submitted to the Department and the process for requesting a public hearing. At least 30 days prior to the deadline for comments, the Department shall publish a summary of the application in a newspaper of general circulation in the area proposed for an experimental lease.

5. Public Hearing. The Department may hold a public hearing on the proposed experimental lease. If 5 or more persons request a public hearing in writing within the established comment period, the Department must hold a public hearing.

1. Notice of Public Hearing. The Department shall publish a notice of the public hearing at least twice in a newspaper of general circulation in the area affected unless otherwise prescribed by the Maine Administrative Procedure Act. Such notice shall be published once at least 30 days prior to the hearing and a second time at least 10 days prior to the hearing. Notice of the public hearing shall also be published in a trade, industry, professional or interest group publication which the Department deems effective in reaching persons interested in the lease hearing. The Department shall also distribute press releases to print media outlets serving the area of the proposed lease application at least two weeks prior to the public hearing. Notice of the public hearing shall include the following information:

- A. a statement of legal authority under which the proceedings are being conducted, including reference to the Administrative Procedures Act, 5 M.R.S.A. §9051 *et seq.* and the aquaculture lease provisions of 12 M.R.S.A. §6072;
- B. a short, plain statement of the nature and purpose of the proceeding and the nature of the experimental lease application;

- C. a statement of the time and place of the hearing;
 - D. a statement of the manner and time within which applications for intervention may be filed;
 - E. a statement of the manner and time within which evidence and argument may be submitted to the Department for consideration.
6. **Municipal Approval.** The Commissioner may not issue an experimental lease for the intertidal zone within a municipality with a shellfish conservation program (12 M.R.S.A. §6671) without the consent of the municipal officers.
 7. **Decision.** The Commissioner shall issue a written decision within 60 days of the close of the comment period or the date of the public hearing, unless the applicant agrees to a longer time. The Commissioner may grant an experimental lease if he/she is satisfied that the proposed project meets the conditions contained in 12 M.R.S.A. §6072-A.
 1. **Standards.** In making the decision, the Commissioner must consider all applicable criteria as established in Chapter 2.37 of this regulation.
 2. **Conditions.** The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. A lease may not be approved unless the Commissioner has received certification from the Department of Environmental Protection that the project will not violate the standards ascribed to the receiving waters classification in Title 38, §465-B. The Commissioner may require environmental monitoring of a lease site (see Chapter 2.37) and may establish any reasonable requirement to mitigate interference, including but not limited to those restrictions outlined in Chapter 2.37 (1)(2).
 3. **Finfish lease applications** must adhere to the minimum finfish lease site separation as contained in Chapter 2.37(3) of these regulations.
 8. **Limit on Size and Duration.** An experimental aquaculture lease may not be issued for a time period greater than 3 years or for an area greater than 2 acres.
 9. **Statement of rights conveyed.** The Commissioner shall include the following statement in a lease issued under this section: "An experimental lease for scientific research or commercial aquaculture research and development conveys only those rights specified in the lease."
 10. **Actions required of lease holder.** After being granted an experimental lease, a lessee shall:
 1. Record the lease in the registry of deeds of each county in which the leased area is located.
 2. Publish a notice in a newspaper of general circulation in the area affected.
 3. Annually submit to the Commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the Commissioner are confidential records for the purposes of 1 M.R.S.A. §402(3)(A). The submitter of commercial research and development may designate information as being only for the confidential use of the Department. The Department's public record must include the

indication that information so designated has been submitted to the Department, giving the name of the submitter and the general nature of the information. Upon written request, a copy of the public records in the report must be provided by the Commissioner to the municipality or municipalities in which or adjacent to which the lease is located.

4. Establish an escrow account or secure a performance bond in the amount required by the Department in the lease. The amount is to be determined by the nature of the aquaculture activities proposed for the lease site as follows:

Category of Aquaculture Lease:

No structure, no discharge	None
No structure, discharge	\$ 500.00
Structure, no discharge	\$

Total combined area of all structures on lease:

=400 square feet	\$1,500
>400 square feet	\$5,000
Structure, discharge	\$25,000

A single performance bond for a structure, discharge lease may be held to meet lease obligations for up to no more than 5 individual leases retained by a leaseholder.

The Department may prorate the performance bond amount for a structure, no-discharge lease where structures are in excess of 2,000 square feet in order to increase the bonding requirement to satisfy the requirements of these rules.

5. Mark the lease site according to the procedures established in Chapter 2.80 of these Regulations.

11. **Lease Rental Fee.** Lessees shall pay a lease rental fee as established in Chapter 2.43 of these Regulations.

12. **Renewal.** Only experimental leases for scientific research may be renewed. Commercial research and development experimental leases may not be renewed. Before deciding on a request for a renewal, the Commissioner must hold a public hearing. The Commissioner shall renew an experimental lease for scientific research unless the Commissioner finds that:

1. the lease holder has not complied with the terms of the lease;
2. research has not been conducted during the term of the lease;
3. the research is being conducted in such a manner that is injurious to the marine organisms; or
4. it is not in the best interest of the State to renew the lease.

13. Annual Lease Review and Revocation. The Commissioner shall conduct an annual review of each experimental lease. The Commissioner may revoke an experimental lease if:

1. there has been no substantial research conducted on the site within the preceding year; or
2. if research has been conducted in a manner injurious to the environment or marine organisms;
or
3. if any other lease condition or terms of these regulations or any applicable law has been violated.

The revocation of an experimental lease is an adjudicatory proceeding as established in 5 M.R.S.A. §8002(1).

2.65 Emergency Aquaculture Lease

1. The Commissioner may grant an emergency aquaculture lease for shellfish pursuant to 12 M.R.S.A. §6072-B when the health and safety of those shellfish are threatened and the Commissioner determines that the relocation of those shellfish will not threaten the water quality of the receiving waters or the health of marine organisms in those waters. The purpose of this section is to allow for the quick relocation of shellfish as the result of an unanticipated, natural phenomenon that is beyond the control of the lease holder. There are two types of emergency situations for which these provisions can be used: a non-disease emergency such as a major storm event or accident and a disease-related emergency. The applicant bears the burden of proof to demonstrate that the organisms to be relocated will not transmit pests, disease or parasites to the new location and that the proposed lease meets all the standards set forth in these regulations.

2. Application Requirements

1. Form. Emergency aquaculture lease applications must be submitted on forms prescribed by the Commissioner and must contain all information required by the Commissioner for consideration of the lease.

2. Fee. No filing fee is required for an emergency lease application.

3. Emergency Relocation for Non-disease Emergencies.

A. Notification Requirements. For non-disease emergencies only, the lessee can apply for a Letter of Permission when circumstances require immediate relocation of animals to ensure their health and safety. The lessee must notify the Department in writing prior to the relocation of any animals. The written notification must include the lessee's name, address, home and business phone number, the name and number of the lease site from which the animals will be moved, a location map showing the area to which the animals will be moved (U.S.G.S. topographic map, a nautical chart or other map of appropriate scale showing the area), and the number and age of the animals to be relocated.

B. Letter of Permission. Within 48 hours of receipt of the written notification of a request for emergency relocation, the Department will either issue a Letter of Permission allowing for the temporary relocation of animals or issue a written denial of the request. If the request is denied, the animals must be returned to a legal lease site within 3 days of the receipt of the denial.

C. Submission of Emergency Lease Application. Within 10 days of the receipt of the Letter of Permission, the applicant must submit a written application for an emergency lease.

Failure to submit a written application within this timeframe will result in the revocation of the Letter of Permission.

- D. Terms for Temporary Approval. The Letter of Permission will remain in effect until the Department issues an emergency lease. If the Department denies the emergency lease request, the applicant must remove the animals within 3 days of the receipt of the decision.

4. Emergency Lease Application Requirements:

- A. The lessee's name, address, home and business phone number of applicant and the location of the existing lease from which organisms will be moved.
 - B. A description of the threat and need for the emergency relocation of the organisms.
 - C. A description of the proposed lease metes and bounds or coordinates, total acreage, a map of the lease area and its adjoining waters and shorelines, with the names and addresses of known riparian owners indicated on the map as listed in the municipal tax records.
 - D. A list of species and an estimate of the numbers of individuals to be relocated to the proposed lease site and their life cycle stage(s).
 - E. The date of proposed relocation, the anticipated duration of the relocation, and a description of how the organisms will be managed for the duration of the lease. Indicate the size, shape and orientation of structures that will be used.
 - F. A description of the degree or exclusive use required by the project.
 - G. A general description of the site including type of bottom, the presence of eelgrass, natural shellfish beds, saltmarsh and the general shoreline and upland characteristics.
 - H. A written statement from a local harbor master, Department Biologist, Marine Warden or Aquaculture Environmental Coordinator on the fishing activity, moorings and navigational channels in the area and the use of the area by riparian owners for ingress and egress.
 - I. The written permission of every owner of intertidal land in, on or over which the emergency aquaculture activity will occur.
 - J. For disease-related emergencies, the applicant may also be required to submit a statement of examination by a state, federal, or Department approved private laboratory indicating its findings and certifying that the marine organisms to be relocated are free of any infectious or contagious disease agents or pests or parasites based on standard methods of diagnosis.
5. Completion. Upon receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information for making a decision on the application. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be complete.
6. Proposed site marking. The applicant must place visible markers to delineate the area proposed to be leased according to the procedures established in Chapter 2.80.
3. Department Site and Project Review. The Department may inspect the proposed site and immediate area to obtain information on but not limited to the general characteristics of the area, the commercial and recreational use of the area and evidence of fishing activity, moorings and

navigational channels. The Department may seek advice with regards to shellfish diseases for consideration in the final decision.

4. **Decision.** After reviewing the application and any information obtained by the Department, the Commissioner shall issue a written decision. The Commissioner may grant a lease if he/she is satisfied that the proposed project meets the conditions contained in 12 M.R.S.A. §6072-B.
 1. **Standards:** In making the decision, the Commissioner must consider the following:
 - A. The applicant's status as a leaseholder pursuant to 12 M.R.S.A. §6072.
 - B. The threat to the water quality of the receiving waters and to the health of marine organisms in those waters.
 - C. The reason and need for an emergency lease. The Commissioner shall consider the need for an emergency lease and whether the cause of the emergency was an unanticipated, natural phenomenon that was beyond the control of the leaseholder. Applicants are encouraged to secure a lease under 12 M.R.S.A. §6072 or §6072-A for non-emergency situations.
 - D. All applicable criteria as established in Chapter 2.37.
 2. **Conditions.** The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the health and safety of the receiving waters and the marine organisms, and that encourage the greatest multiple, compatible uses of the leased area. These conditions must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve exclusive rights of the lessee to the extent necessary to carry out the purpose of the lease. The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. A lease may not be approved unless the Commissioner has received certification from the Department of Environmental Protection that the project will not violate the standards ascribed to the receiving waters classification in Title 38 §465-B.
5. **Limit on Duration.** An emergency aquaculture lease may only be issued for 6 months or less.
6. **Extension of emergency aquaculture lease.** A person wanting to extend an emergency lease beyond 6 months must submit an application for either a regular lease pursuant to 12 M.R.S.A. §6072 or a limited purpose lease pursuant to 12 M.R.S.A. §6072-A for that lease area within 60 days of being granted the emergency aquaculture lease. If the application for a new lease is accepted, the emergency aquaculture lease will remain in effect until the effective date of the new lease. If the Commissioner denies that person a lease under §6072 or §6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the Commissioner's decision.
7. **Public Notice.** Upon granting an emergency aquaculture lease, the Commissioner must provide notice to the municipality in which the emergency aquaculture lease is located. Within at least 30 days from granting an emergency aquaculture lease, the Commissioner shall:
 1. Publish notice of the emergency aquaculture lease in a newspaper of general circulation in the lease area. The notice must describe the area leased and list any restrictions in the leased area;

2. Mail a notice to any public agency the Department determines should be notified, including but not limited to State Planning Office, Department of Environmental Protection, and the United States Army Corps of Engineers.
8. Actions Required of lease holder. After being granted an emergency aquaculture lease, a lessee shall:
 1. Record the lease in the registry of deeds of each county in which the leased area is located; and
 2. Establish an escrow account or secure a performance bond in the amount required by the Department in the lease. The amount is to be determined according to the schedule contained in Chapter 2.40.
9. Revocation.
 1. The Commissioner may revoke the lease if he/she determines that the aquaculture project fails to meet the criteria contained in Chapter 2.65 (4) of these regulations. The revocation of an emergency aquaculture lease is not an adjudicatory proceeding as established in 5 M.R.S.A. §8002(1).

2.75 Minimum Lease Maintenance Standards

1. Each lessee shall mark the lease in a manner prescribed by the Commissioner in the lease.
2. Each lessee shall maintain his aquaculture lease in such a manner as to avoid the creation of a public or private nuisance and to avoid substantial injury to marine organisms.
3. Each lessee is obligated for the routine collection and proper disposal of all errant gear, errant equipment, or errant solid waste from the lease site.

2.80 Marking Procedures for Aquaculture Leases

1. All aquaculture leases shall be marked with a device which displays the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The perimeters of the surfaces of the device shall be marked by reflective tape.
2. The signs shall be exhibited by floating device, such as a buoy, on the water surface or as prescribed in the decision or lease documentation.
3. The signs shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the area exceeds 100 yards in distance, additional devices shall be displayed so as to clearly show the boundary line of the area. In situations where the topography or distance of the lease area interrupts the line of sight from one sign to the next, additional signs shall be displayed so as to correct this deficiency or as prescribed in the decision or lease documentation.

2.90 Limited-purpose aquaculture (LPA) license

A. LPA License

- (1) No person may engage in the activities described in Chapter 2.90 and 12 M.R.S.A. §6072-C without a current LPA license issued by the Department of Marine Resources (DMR) in accordance with these regulations. A license application may be obtained upon request to the

Department of Marine Resources, State House Station 21, Augusta, Maine 04333-0021. A non-refundable application fee must be paid in cash or by certified check in the amount of \$50 per license application. LPA licenses expire at the end of each calendar year with the exception of those licensed granted in the calendar 2002, which shall remain effective through December 31, 2003. A maximum of four (4) separate licenses may be issued to a single individual during any one calendar year. LPA licenses are non-transferable.

- (2) There can be no more than three (3) LPA licensed sites within a 1,000-foot radius of any other existing LPA licensed site. This standard does not require a minimum separation between individual leases, rather it is a density of licenses within any area of a 1,000' radius. See Figure 1. below for four examples of this standard where a license site is encircled by a radius of 1,000 feet.

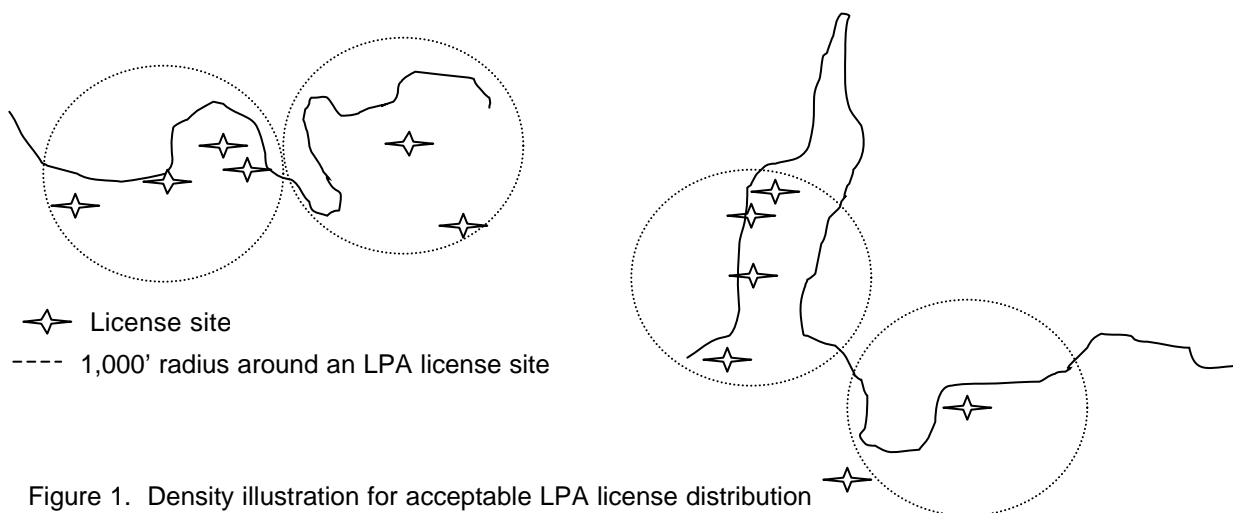


Figure 1. Density illustration for acceptable LPA license distribution

LPA licenses held by riparian property owners that are used to place authorized gear as listed in Chapter 2.90 (B)(6)(b), with the exception of shellfish rafts, immediately offshore within the length of shoreline under their ownership are exempt from this density standard. Requests for this exemption must be indicated on the application.

- (3) Up to three (3) unlicensed assistants per license may be declared as helpers. The list of unlicensed assistants may be amended, per instructions from the Department, to include new unlicensed assistants, but never to include more than three (3) individuals, by clearly indicating the new name(s) and having the license holder sign the Department approved amended copy of their application.
- (4) A license holder shall comply with all applicable statutes and regulations pertaining to the harvest, processing, storage, possession, transport, sale and consumption of shellfish. The issuance of an LPA license conveys only those rights specified in Chapter 2.90 and 12 M.R.S.A. §6072-C.

B. Application requirements

- (1) Species
Applications must indicate the common and scientific names of the species to be cultivated under the license in accordance with Chapter 2.90(D).
- (2) Sources

Shellfish stock or seed may be obtained from either wild sources, hatcheries, or nurseries, with the exception of stock or seed of Hard Clam / quahog (*Mercenaria mercenaria*), Hen Clam (*Spisula solidissima*), or Soft shelled clam (*Mya arenaria*). Hatcheries or nurseries are the only permitted sources for these clam species, unless the Department issues a shellfish transplant permit that authorizes the collection of undersized animals.

Applications must identify the source of the shellfish stock or seed to be cultivated or grown, and for hatcheries or nurseries list the current name, address and phone number of the hatchery or nursery source for each species listed under Chapter 2.90(B)(1) above. Applications must also include additional applicable information required pursuant to Chapter 2.90(D) and Chapter 24.

All sources of hatchery supplied seed or stock must be from certified hatcheries approved by the DMR Public Health Division. Annual Inspection of a molluscan hatchery will involve:

Laboratory and diagnostic examination of representative lots of shellfish to determine that seed or stock are free from evidence of infectious diseases, pests, parasites or other organisms other than the intended species;

Evaluation of the disease history and other problems associated with the hatchery or the source or area from which the seed or stock originates; and

An audit and evaluation of biosecurity practices used in the production of the seed or stock.

It is the responsibility of the hatchery or the importing grower to provide the Department with the annual inspection and pathology reports in a timely manner so that proper review can be conducted prior to the permit deadline.

Authorized shellfish species must be free from evidence of infectious diseases, pests, parasites or other organisms other than the intended species pursuant to Chapter 24.

No shellfish seed or stock may originate from a closed area pursuant to Chapters 95 and 96.

All wild shellfish stock or seed used for cultivation or grow-out must originate from within the same Health Area defined under Chapter 2.05(10) as the LPA site.

Use of wild shellfish stock or seed originating from outside the Health Area of the LPA site will require evidence that the seed or stock is consistent with the species authorized under Chapter 2.90(D) and that the seed or stock is free from evidence of disease, and a permit from the DMR Public Health Division. The permit shall be reviewed according to the requirements outlined in Chapter 24.05 through 24.10.

(3) Site location

- (a) The application must provide one (1) geodetic coordinate in degrees/minutes/seconds to the hundredths place, the coordinate source (nautical chart number, the edition and its date or software name) and the datum of the coordinate source, for the center of the license site. The license site must be accurately depicted on a portion of a US Geologic Survey Topographic map or nautical chart.
- (b) The application must provide a brief description of the license site, in particular noting the bottom characteristics and whether there are eelgrass beds present in proximity to the site.

(4) Required Signatures

The application form shall require the following signatures:

- (a) The individual applicant's signature, including printed name and date, which shall verify that the application does not contain false information, that the applicant will comply with all applicable laws and regulations, and that the applicant agrees to comply with biotoxin monitoring requirements pursuant to Chapter 2.90(E)(3).
- (b) Harbormaster or appropriate municipal officer's signature, which shall verify that the officer has received and read a copy of the application that includes the documentation on notification of riparian property owners outlined in Chapter 2.90(B)(5), and that the license activities will not present an unreasonable impediment to safe navigation, will not present an unreasonable interference with fishing or other uses of the area and will not present an unreasonable interference with riparian ingress and egress. The meaning of these standards are the same as those outlined in Chapter 2.37(1)(1)(A).

In towns not served by a harbormaster, an appropriate municipal official shall be a selectman or other elected official. For the unorganized territory where a harbormaster does not have jurisdiction a marine patrol officer may sign.

- (c) The absence of any required signature will result in the denial of the application. At the request of the applicant the Department may review the basis for a harbormaster's or appropriate municipal official's denial of a signature. The Department may, following such review and upon a determination that a harbormaster or appropriate municipal official's signature was withheld without basis, approve a license application. Such a determination must take into consideration a review by the local marine patrol officer of the application and a statement from the marine patrol officer that the license activities will not present an unreasonable interference with safe navigation, will not present an unreasonable interference with fishing or other uses of the area and will not present an unreasonable interference with riparian ingress and egress.

(5) Notification of riparian property owners & municipalities

- (a) Riparian owners must be notified by sending, by certified mail, a copy of the LPA application to an address certified by the municipal clerk or Bureau of Revenue Services, Unorganized Division for unorganized territory. The application must be sent to all riparians at the time that it is submitted to the DMR. A copy of the certified return receipt must be included with the application. If the license applicant is the only riparian the notification requirement is waived.
- (b) Failure to notify riparians and include copies of the certified return receipts with the submitted application will result in the denial of the application.
- (c) The Department shall notify any town or plantation of the final status of an application.

(6) Site Plans

- (a) Plan view
The application must include a plan view, which must be on 8.5" x 11" size paper and show the maximum layout of gear to be deployed drawn to scale, with the scale indicated to

verify the 400 square foot limit. The site plan must include a north arrow with True or magnetic clearly indicated, arrows that indicate the tide's primary ebb and flood directions, mean high and low-water marks, and the distance from the license to these mean high and low-water marks. The site plan shall also include to a distance of 1,000 feet from the license in all directions, the locations of any federal or local channels, anchorages, moorings, structures (including other LPA sites), existing lease boundaries, other LPA licenses (including whether or not they are exempt from the density requirement in 2.90 (A)(2)), DMR water quality closure lines (including distances), and property lines for all riparian owners within 300 feet.

(b) Gear description:

If gear is to be used, the applicant shall indicate which of the following authorized gear will be used, and include an overhead view and cross-sectional elevation view of the gear that includes specifications on all mooring equipment to be used. Aquaculture gear, other than the list of equipment described in this section, may not be used. The descriptions are generalizations of the physical appearance, purpose and uses of each type of gear and are not a substitute for a project specific description with the dimensions of the gear to be used on site. All dimensional information on the mooring equipment contained inside and outside the boundaries must be included pursuant to 12 M.R.S.A. §6072-C(5)(E)(2)(C).

(i) Upweller or "FLUPSY"

An upweller device or "floating upweller system" (FLUPSY) is a self-contained approximately 8 by 20 foot raft similar to a floating dock that sits above the surface of the water roughly 2 feet. The raft generally contains approximately 12 circular "silos" or 30-inch by 20-inch diameter culture tubes that are partially constructed with fine mesh that allows ambient seawater to be pumped or tidally driven through the silos. The flow of seawater provides nutrients to shellfish "spat" or tiny seed contained within the silos. The spat are removed when they are large enough to be transferred to a grow-out site. These devices are most conveniently placed in marinas where power is available to operate a noiseless $\frac{3}{4}$ horsepower axial flow submersible electric pump.

(ii) Shellfish rafts, associated predator nets and spat collectors

A shellfish raft is similar to a floating dock utilized as a working platform from which seed shellfish are suspended or contained by some form of device in which the shellfish are reared to a market size product. The raft may also be used as a work site to seed, sort, clean or harvest product and perform maintenance on the culture devices. A typical blue mussel raft is a floating square frame with beams spaced every foot spanning the raft width from which numerous ropes or dropper lines are suspended but do not touch the seafloor, to inhibit predators climbing up the ropes to eat the mussels. Seed mussels are attached to dropper lines mechanically or by hand with a biodegradable cotton mesh and prevented from slipping off the lines by the placement of 6-inch pegs every foot or so. The vertical profile of an unseeded raft ranges from 2.5 feet above the water surface to roughly a 1-foot elevation when seed mussels are attached. A shellfish raft can be a solid platform from which shellfish tray racks and or mesh bags containing shellfish are suspended beneath the raft in the water. The suspended devices would be accessed through openings similar to a trap door in the surface of the float. Predator nets are commonly suspended with weights for adequate tension and have large diagonal mesh openings of at least four (4) inches. Dropper lines are used to collect mussel spat that may be collected from the water column when they attach to the lines. For purposes of this regulation the use of specialized spat collection devices or gillnet material placed in onion bags are not included.

(iii) Shellfish tray racks and over wintering cages

Shellfish tray racks have a cubic dimension similar to a box, cage or column-like unit that is made of coated wire mesh or rigid plastic on a wood, plastic or metal frame. A rack will generally contain interior shelves that can hold 1-2 mesh bags per shelf and is used to contain seed shellfish. The mesh material allows water to pass through providing nutrient to the shellfish.

(iv) Soft bags, semi rigid bags and floating trays

Bags and tray devices are generally constructed of a plastic or similar material of various mesh sizes that are changed throughout the growing season to accommodate greater water flow as the shellfish increase in size. The bags and trays vary in size. Bags have general dimensions of 16-22-inches wide by 28-40-inches long by 2-3-inches in height. Bags are most often connected end to end, floated on the surface using pipe insulation placed inside the bags on the sides and moored at each end of length or string of bags. Trays may refer to the shelves contained in the shellfish tray racks described under Chapter 2.90(B)(5)(b)(iii). Tray may refer to a rigid plastic or wire mesh container generally 3 feet wide by 4 feet long by 6-inches high that is deployed between parallel lines and may be floated on the surface or submerged.

(v) Lantern nets

A lantern net typically is a five or ten tier set of circular nets of approximately 18-inch diameter and 6-inch depth suspended from a central line. Mesh sizes typically vary from 1/8-inch mesh to 1.5-inch mesh size.

(vi) Fencing and brushing

Fencing and brushing are most commonly used by municipal shellfish programs in the intertidal zone for the collection of soft shell clam spat in their management plans in conjunction with intertidal anti-predator netting. Whereas intertidal activities are not authorized pursuant to 12 M.R.S.A. §6072-C(2) above the mean low water mark these devices are not authorized for use under Chapter 2.90 except when used below the mean or extreme low water mark.

(vii) Moorings

Mooring devices vary in terms of materials, tension ratings and range of sizes available and are generally site specific. For the purposes of Chapter 2.90, they include the anchor type and all tackle securing fixed or floating gear.

(7) Renewal of licenses

In order to continue operations at a particular licensed site beyond the end of a calendar year, a license holder must have submitted a new application to the Department postmarked no later than December 15th. Applications received for the operation at an existing license site received after December 15th shall be processed on a first-come, first-serve basis. There are no other provisions for the grandfathering of license sites provided for in these rules.

If a new application has not been submitted to the Department by December 31st for an existing site, the license holder is required to insure that all gear and equipment at that licensed site is removed from the water on or before the termination of the license on December 31st.

C. Site Limitations

(1) Maximum size

Gear, excluding mooring equipment, may not cover more than 400 square feet in any contiguous configuration.

(2) Territorial waters

LPA license sites must be located within Maine's territorial waters as defined in 12 M.R.S.A. §6001(48-B) below the mean low water mark pursuant to 12 M.R.S.A. 6072-C(2) and below the extreme low water mark in towns that have a DMR approved Municipal Shellfish Program (MSP) that stipulates its jurisdiction extends to extreme low water.

(3) DMR Water Quality Program Closure Areas

(a) LPA license sites may not be located within 300 feet of any closure boundary line.

(b) LPA license sites may only be located in areas that are classified as approved, conditionally approved, restricted, or conditionally restricted, pursuant to DMR regulations Chapter 95 and 96.

(c) Exemption for shellfish less than 25mm in size.

An LPA license site that rears or contains only shellfish 25mm or less in size may be located within prohibited areas pursuant to DMR regulations Chapter 22. All movement of cultured shellfish from a license site under this exemption must be conducted pursuant to DMR regulations in Chapter 22, which govern the relaying or movement of shellfish from these areas to areas suitable for harvesting.

(4) Department of Inland Fisheries and Wildlife (IF&W) Essential Habitats

LPA license sites may not be located within the areas regulated pursuant to 12 M.R.S.A. §§7753, 7754(2)(3) and 7755-A(1)(2)(3) and pursuant to IF&W regulation 09-137 CMR Chapter 8, Endangered Species. Maps showing the boundaries of essential habitat are available from the IF&W regional headquarters, municipal offices, the Land Use Regulation Commission for unorganized territories and DEP regional offices.

(5) United States Army Corp of Engineers (ACOE) Authorization

Upon receipt of an LPA license application, the Department shall forward a copy of the application to the ACOE for their review and approval. A permit from ACOE is required prior to the placement or use of any gear proposed in a LPA application. No structures may be located within the boundaries of a Federal Navigation Project. The ACOE may require additional project specific information of the applicant.

D. Authorized Shellfish Species

An LPA license may be issued only for the cultivation of the following shellfish species: Blue Mussel (*Mytilus edulis*), Hard Clam / quahog (*Mercenaria mercenaria*), Hen Clam (*Spisula solidissima*), American or Eastern oyster (*Crassostrea virginica*), European Oysters (*Ostrea edulis*) and the Soft shelled clam (*Mya arenaria*).

E. Activity limitations & requirements

(1) The licensed activity must not generate a discharge into territorial waters pursuant to 12 M.R.S.A. §6072-C(2)(A), 38 M.R.S.A. §413 and DMR regulations Chapter 2.05(7).

(2) An LPA license applicant may declare assistants to be named on any LPA license. Declared assistant(s) named on any LPA license must in possession of a copy of the LPA license whenever engaged in any activity at that licensed site. Individuals other than the license-holder's declared assistants may assist the license holder and, in that capacity, utilize, raise, lift, transfer or possess any approved aquaculture gear belonging to that license holder if a

hurricane warning issued by the National Weather Service is in effect for any coastal waters of the State.

(3) Marine Biotoxins

(a) Closed Polluted Area compliance

Harvest of product shall be prohibited in site areas which are closed due to marine biotoxins pursuant to Chapter 96.

(b) Diarrhetic Shellfish Poisoning (DSP)

When local sampling indicates DSP toxin is present in the area, or phytoplankton which may cause DSP toxin are found in the area, then analysis for DSP will be required prior to DMR approval for the harvest or sale of product from the LPA site. A minimum of twelve (12) shellfish must be submitted by the license holder to the DMR at least two (2) business days prior to anticipated harvest.

(c) Domoic Acid (ASP)

When local sampling indicates ASP toxin is present in the area, or phytoplankton which may cause ASP toxin are found in the area, then analysis for ASP will be required prior to DMR approval for the harvest or sale of product from the LPA site. A minimum of twelve (12) shellfish must be submitted by the license holder to the DMR for this analysis at least five (5) business days prior to the anticipated harvest. Prior to approving the harvest or sale of shellfish from any LPA site, which has submitted shellfish samples to DMR, the DMR may, in its sole discretion, send samples to an accredited analytical laboratory for analysis for Domoic Acid (ASP) toxin.

(d) Requirements and procedures

(i) Monitoring

The cost of monitoring for marine biotoxins, when required under the provisions of this section, shall be paid for by the license-holder. When monitoring is required, it must be done prior to the harvest of shellfish from the site for human consumption, or for any other commercial or non-commercial use. The license-holder must submit a minimum of twelve (12) shellfish for analysis at a DMR Public Health Division Biotoxin Laboratory by contacting the Boothbay Harbor facility at (207) 633-9555 or the Lamoine facility at (207) 667-2418.

Sample results will be reported to the license-holder on a marine biotoxin analysis certificate issued by the DMR Public Health Division.

(4) Record keeping

Complete, legible and accurate records of transport, harvest, and monitoring shall be maintained by the license-holder and available for inspection for at least two (2) years and must include the:

LPA license number, site location, date and data related to marine biotoxin analyses;

source of shellfish, including seed if the seed is from growing areas which are not in the approved classification;

dates of transplanting and harvest; and

detailed records of sales.

Records of the origin and health status of all seed or shellfish stocks reared on the site must also be maintained.

Records must be made available to DMR for inspection.

- (5) Shellfish harvested from the site must be kept in containers that prevent commingling of different harvest lots.

F. Maintenance Standards

- (1) All aquaculture gear must be maintained, and kept in a fully operational condition. The license holder is obligated to collect and or remove any loose or errant gear or equipment that is dislodged from the licensed site.
- (2) Each LPA site must be clearly marked at each corner, or at the center, as is appropriate to the gear type deployed, with a buoy or buoys able to support at least two (2) inch high letters spelling "Sea Farm" and clearly marked with reflective tape. The license-holder's name, homeport or home address, and LPA license number must be clearly displayed on every marking buoy and piece of gear or equipment.
- (3) Mussel rafts deployed at an LPA license site must be marked according to the United State's Coast Guard's Aids to Private Navigation standards and requirements outlined in CFR 33.1.66.

CHAPTER 2
AQUACULTURE LEASE REGULATIONS

INDEX

EFFECTIVE DATE:
July 11, 1983

AMENDED:
October 28, 1986- Section 80
September 1, 1987- Section 90
December 1, 1988
February 25, 1998
May 28, 1998
June 19, 2002 – section 01 repealed; sections 10, 12(3), 60(3), 64(2)(3)(G), 75(1)&(2) and 80(2)&(3)
July 22, 2002 – sections 05 and 90
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February 17, 2003 – sections 10(1)(4)(11), 15(1)(2)(3)(4), 37(1)(3), 40(2), 64(2)(3)(4)(5)(10), 75(3)
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